

**STATE OF MINNESOTA
CAMPAIGN FINANCE AND PUBLIC DISCLOSURE BOARD**

.....
**February 6, 2019
St Croix Room
Centennial Office Building**
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MINUTES

The meeting was called to order by Chair Leppik.

Members present: Flynn, Haugen, Leppik, Moilanen, Rosen (by telephone), Swanson

Others present: Sigurdson, Engelhardt, Olson, Pope, staff; Hartshorn, counsel

MINUTES (January 3, 2019)

Before a vote was taken on the minutes, Mr. Sigurdson explained that Member Rosen had needed to leave town unexpectedly on the night before the meeting and therefore was attending by telephone. Mr. Sigurdson said that notice of an electronic meeting had been posted on the Board's website and sent to the media and Board information email distribution lists as soon as possible after it became clear that Member Rosen would be attending by telephone. Mr. Sigurdson stated, however, that because the timing of the notice did not meet the requirements of the Open Meeting Law, Member Rosen would be listening to the meeting and participating in the discussion but would not be voting on any matter.

After discussion, the following motion was made:

Member Moilanen's motion:	To approve the January 3, 2019, minutes as drafted.
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Vote on motion:	A roll call vote was taken. Motion passed (5 ayes, Member Rosen did not vote).
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CHAIR'S REPORT

A. Meeting schedule

After discussion, the next Board meeting is scheduled for 10:30 a.m. on Wednesday, March 13, 2019.

EXECUTIVE DIRECTOR REPORT

Mr. Sigurdson presented members with a memorandum regarding this matter that is attached to and made a part of these minutes. Mr. Sigurdson told members that reports were due in January for all three programs overseen by the Board and that most of the required reports had been filed. Mr. Sigurdson also said that staff had processed the public subsidy payments for the candidates in the special election in senate district 11. Mr. Sigurdson stated that he had made introductory presentations

to the legislative committees with jurisdiction over the Board and expected to return shortly to testify on budgetary matters. Mr. Sigurdson directed members to a memorandum attached to his report that discussed a recent federal appellate court decision regarding disclosure of donors by nonprofit organizations. Finally, Mr. Sigurdson told members that due to the scope of the filing activities in January, the issue of late filing fees and civil penalties would be discussed at the next meeting.

ADVISORY OPINION 450

Mr. Sigurdson presented members with a memorandum regarding this matter that is attached to and made a part of these minutes. Mr. Sigurdson told members that this request concerned whether members of a new caucus at the legislature could use their principal campaign committee funds for certain caucus expenses. Mr. Sigurdson said that the draft opinion listed specific expenses and determined that the expenses fell within the noncampaign disbursement categories of costs of serving in office and costs associated with caucus leadership. The draft opinion therefore concluded that the legislators could use committee funds for those expenses.

After discussion, the following motion was made:

Member Flynn's motion:	To approve Advisory Opinion 450 as drafted.
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Vote on motion:	A roll call vote was taken. Motion passed (5 ayes, Member Rosen did not vote).
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LEGISLATIVE PROPOSALS

Mr. Sigurdson presented members with an initial memorandum regarding this matter and a supplemental memorandum. Both documents are attached to and made a part of these minutes. Mr. Sigurdson first discussed the policy provision related to the definition of express advocacy. Mr. Sigurdson reviewed the current statutory scheme governing independent expenditures and other communications not coordinated with candidates. He then presented several examples of communications that would be independent expenditures under the current statutory definition and several examples of communications that would not. Mr. Sigurdson reviewed the three options presented for the legislative proposal and said that option 3 was very similar to the federal definition of express advocacy.

After the discussion, the following motion was made:

Member Flynn's motion:	To go forward with option 3 on page 6 of the supplemental memorandum as amended to remove the language “, including the proximity to the election,” and the words “or encourages some other kind of action.”
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Vote on motion:	A roll call vote was taken. Motion passed (4 ayes, Member Haugen voted nay, Member Rosen did not vote).
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Mr. Sigurdson then presented language regarding the proposal to increase the threshold for reporting honoraria on an annual statement of economic interest from \$50 to \$250. Mr. Sigurdson said that this provision could be added to the technical proposals for the economic interest program.

After discussion, the following motion was made:

Member Swanson's motion: To go forward with the proposal to increase the disclosure threshold for honoraria from \$50 to \$250 and to add this to the technical proposals for the economic interest program.

Vote on motion: A roll call vote was taken. Motion passed (5 ayes, Member Rosen did not vote).

Mr. Sigurdson next presented language regarding the policy proposal for the economic interest program to require disclosure of government contracts. Mr. Sigurdson reviewed the two options presented.

After discussion, the following motion was made:

Member Moilanen's motion: To go forward with option 1 on page 2 of the supplemental memorandum as amended to substitute clause (i) from option 2 for clause (i) in option 1.

Vote on motion: A roll call vote was taken. Motion passed (5 ayes, Member Rosen did not vote).

Mr. Sigurdson then presented language regarding the policy proposal for the economic interest program to require disclosure of beneficial interests. Mr. Sigurdson reviewed the two options presented for the definition of beneficial interest and the additional amendments necessary to implement that definition. Member Swanson then presented the following language as a third option for the definition of beneficial interest:

Subd. 7e. **Beneficial interest.** "Beneficial interest" means the right, or reasonable expectation of the right to the possession of, use of, or direct financial benefit from an asset owned by another due to a contract or relationship with the owner of the asset.

After discussion, the following motion was made:

Member Swanson's motion: To go forward with option 3 for the definition of beneficial interest and the other amendments required to implement that definition as presented on pages 3-4 of the supplemental memorandum.

Vote on motion: A roll call vote was taken. Motion passed (4 ayes, Member Rosen did not vote, Member Haugen voted nay).

EXECUTIVE SESSION

The chair recessed the regular session of the meeting and called to order the executive session. Upon recess of the executive session, the regular session of the meeting was called back to order and the chair had the following to report into regular session:

Final public subsidy audit report for the special election in senate district 11

ENFORCEMENT REPORT

A. Consent Items

1. Administrative termination of lobbyist Bert McKasy (9977)

Mr. Olson told members that in response to a notice regarding the need to file a lobbyist disbursement report, Mr. McKasy had stated that he had not engaged in lobbying in 2018 and that he was terminally ill. Because Mr. McKasy had filed a report covering the period through May 31, 2018, Board staff had administratively terminated his lobbyist registration retroactive to that date, thereby eliminating the need to file any further reports.

2. Administrative termination of lobbyist Thomas Keliher (9283)

Mr. Olson told members that Mr. Keliher had passed away on September 20, 2018, and that Board staff had administratively terminated Mr. Keliher's lobbyist registration retroactive to that date.

3. Administrative termination of lobbyist Alexander Wald (4131)

Mr. Olson told members that Mr. Wald's principal association, the Minneapolis Area Association of Realtors, had notified Board staff on December 20, 2018, that Mr. Wald had not been employed by the association since April 2018. Mr. Olson said that a disbursement report had been filed for Mr. Wald that same day that covered the second half of 2018. Board staff had administratively terminated Mr. Wald's lobbyist registration effective December 20, 2018.

4. Administrative termination of lobbyist Nicque Mabrey (2886)

Mr. Olson told members that Ms. Mabrey's principal association, OutFront MN, had notified Board staff that she had not been employed by the association since the spring of 2015. Board staff then had administratively terminated Ms. Mabrey's lobbyist registration retroactive to December 31, 2015.

After discussion, the following motion was made:

Member Swanson's motion:	To approve all matters on the consent agenda.
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Vote on motion:	A roll call vote was taken. Motion passed (5 ayes, Member Rosen did not vote).
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B. Discussion items

1. Request to withdraw registration of Responsible Government for Wright County Committee (41216)

Mr. Olson told members that the Responsible Government for Wright County Committee had registered as an independent expenditure political committee on October 10, 2018. Mr. Olson said that in early November, the committee's legal counsel had contacted Board staff and had explained that the committee only sought to influence elections for county offices, not state offices. Mr. Olson stated that the committee's legal counsel therefore was asking to withdraw the committee's registration because it never had to register with the Board.

2. Balance adjustment request – Neighbors for Peggy Flanagan (17858)

Mr. Olson told members that the Neighbors for Peggy Flanagan committee had reported a 2017 ending cash balance of \$1,169.85. The committee's actual cash balance, however, was \$1,373.55, a difference of \$203.70. Mr. Olson said that the committee's treasurer believed that the discrepancy was caused by mistakenly reporting a \$15 expenditure in 2017 rather than in 2018, and by not accounting for \$188.70 in contributions and credit card processing fees from a 2015 special election campaign. The treasurer stated that the 2015 credit card contributions were processed by a company that was now defunct, making it impossible to obtain records regarding those contributions. Mr. Olson stated that the treasurer was asking the Board to adjust the committee's 2017 ending cash balance upward from \$1,169.85 to \$1,373.55.

3. Request to refer matter to attorney general's office – Resilient PAC (41179)

Mr. Olson told members that Resilient PAC was a political committee that had failed to file its 2018 pre-primary and pre-general reports and had failed to amend its September 2018 report after being informed of reporting errors by staff. Mr. Olson said that letters had been mailed in August, November, and December 2018, and an email had been sent in December 2018, but no response had been received. The committee had accrued a \$1,000 late fee and a \$1,000 civil penalty for the pre-primary report. Mr. Olson said that staff was asking the Board to refer the matter to the attorney general's office to seek an order compelling the filing of the pre-primary report and a judgment for the accrued late filing fee and civil penalty. Mr. Olson stated that because the committee might not file its 2018 pre-general report or amend its September 2018 report, staff also was asking the Board to approve referral of those matters to the attorney general's office when the committee had accrued the statutory maximum late filing fees and civil penalties for those reports.

4. Request to refer matter to the attorney general's office – Minneapolis DFL Committee (20567)

Mr. Olson told members that staff was withdrawing this request because the Minneapolis DFL Committee had contacted Board staff about its missing reports.

5. Request to withdraw registration of Lori Swanson Appreciation Committee (30707)

Ms. Engelhardt told members that the Lori Swanson Appreciation Committee had registered as a political fund on December 5, 2018. Ms. Engelhardt said that on December 7, 2018, staff had reached out to the fund's chair, Thomas Hara, to confirm that the fund's purpose was to place an advertisement in the Star Tribune thanking Ms. Swanson for her years of service as attorney general and that the fund had no other purposes related to the election of any candidates. Ms. Engelhardt stated that Mr. Hara had confirmed that the fund had no purposes related to the election of candidates and had asked that the fund's registration be withdrawn because it never had to register with the Board.

After discussion, the following motion was made:

Member Swanson's motion: To approve discussion items 1, 2, 3, and 5.

Vote on motion: A roll call vote was taken. Motion passed (5 ayes, Member Rosen did not vote).

C. Waiver requests

<u>Name of Candidate or Committee</u>	<u>Late Fee & Civil Penalty Amount</u>	<u>Reason for Fine</u>	<u>Factors for waiver</u>	<u>Board Member's Motion</u>	<u>Motion</u>	<u>Vote on Motion</u>
6th Congressional District GPM (20912)	\$800 LFF	2018 pre-general	Party unit never received nor spent more than \$100 and thus was never required to register. Party unit has filed termination statement.	Member Swanson	To waive the late filing fee	Roll call vote was taken. Motion passed (5 ayes, Member Rosen did not vote).
Friends of Fair Courts (Anthony Brown) (18403)	\$175 LFF	September 2018	Candidate misunderstood registration requirement and registered committee 8/31/18, triggering the requirement to file September report. Based on receipts, committee wasn't required to register with Board until mid-October. Treasurer also experienced technical difficulties when attempting to file report electronically.	Member Swanson	To waive the late filing fee	Roll call vote was taken. Motion passed (5 ayes, Member Rosen did not vote).
Hausman (Alice) Volunteer Committee (12313)	\$750 LFF	2018 pre-general	New treasurer had trouble certifying and filing report using CFR software. He initially filed another copy of pre-primary report rather than pre-general report. He was in contact with staff and eventually was able to file report after being told how to download data from Board's FTP server.	Member Swanson	To waive the late filing fee	Roll call vote was taken. Motion passed (5 ayes, Member Rosen did not vote).

Lobbyist Rekoe Howard (4461)	\$25 LFF	1/15/19 lobbyist	New lobbyist had difficulty logging into website and had limited time to resolve issue as he was using public computer terminal. He filed paper report in person the day after due date.	Member Swanson	To waive the late filing fee	Roll call vote was taken. Motion passed (5 ayes, Member Rosen did not vote).
52nd Senate District RPM (20886)	\$50 LFF	2018 pre- primary	Former treasurer moved out of state and party unit had difficulty finding new treasurer. Chair ultimately took over treasurer's duties but filed report a day late.	Member Swanson	To waive the late filing fee	Roll call vote was taken. Motion passed (5 ayes, Member Rosen did not vote).
Minn PACE (80003) (NASW-MN)	\$50 LFF	2018 pre- general	New deputy treasurer became aware of due date shortly before report was due and supporting association's office was closed on due date. She has since updated treasurer's address to reflect supporting association's office address rather than treasurer's home address, so she will receive mailed notices from Board directly.	Member Swanson	To waive the late filing fee	Roll call vote was taken. Motion passed (5 ayes, Member Rosen did not vote).
1st Judicial District Republican Committee (40959)	\$50 LFF	2018 June report	Former treasurer moved out of state in May and party unit had difficulty finding new treasurer to file report on short notice. A no change report was filed a few days late. Committee had no financial activity at all in 2017 or first five months of 2018.	Member Swanson	To waive the late filing fee	Roll call vote was taken. Motion passed (5 ayes, Member Rosen did not vote).
Lobbyist Dan McGrath (3057) and Minnesota Majority	\$1,989.61 LFF \$2,000 CP	1/15/2017 lobbyist; 2016 principal	Lobbyist thought registration had been terminated years ago and hadn't lobbied since at least 2016, when principal association closed. Lobbyist was very ill in 2016 and sought further treatment in 2017. All mail was sent to principal's address and he did not receive it. He is unemployed and lacks means to pay outstanding fees and penalties. Request includes \$989.61 of a \$1,000 LFF and a \$1,000 CP for late 1/15/2017 lobbyist report, owed by lobbyist individually, as well as a \$1,000 LFF and \$1,000 CP for late 2016 principal report, owed by principal.	Member Swanson	To waive the late filing fees and civil penalties	Roll call vote was taken. Motion passed (4 ayes, Member Rosen did not vote, Member Flynn abstained).

62nd Senate District DFL (20483)	\$1,000 LFF	2018 pre-primary	Treasurer failed to file report and did not respond to any communication from party unit chair or Board staff. As soon as she learned report had not been filed, chair filed report. Party unit has since elected new treasurer.	Member Swanson	To waive the late filing fee	Roll call vote was taken. Motion passed (5 ayes, Member Rosen did not vote).
Alberder Gillespie (17891)	\$700 LFF	2017 year-end	Candidate didn't realize that treasurer failed to file report by deadline until she received letter regarding late fee. She stated that problems with the personal relationship between herself and her treasurer impacted communication between committee and Board.	Member Leppik	To reduce the late filing fee to \$350	Roll call vote was taken. Motion passed (5 ayes, Member Rosen did not vote).
28th Senate District DFL (20719)	\$2,000 LFF \$1,300 CP	2018 pre-primary; 2018 pre-general	New treasurer said there was considerable confusion when he became treasurer, causing pre-primary and pre-general reports to be late. Both reports were filed as no-change reports. However, there is an unexplained balance discrepancy of \$290.60 between reported 2017 ending cash balance and reported 2018 beginning cash balance.	Staff will bring this matter back in March with additional information.		
Fight For Our Future PAC (41160)	\$1,125 LFF \$100 CP	June 2018; 2018 pre-primary; 2018 pre-general	Officers lacked time to devote to committee, thus committee was inactive and balance remained the same from late 2016 through late October 2018. Treasurer failed to file 2018 pre-primary report until September 5, which accounts for \$1,000 of accrued LFF and \$100 CP. All late reports were no change reports. Officers have begun to liquidate committee's assets and have decided to terminate registration with Board.	No motion		
7B House District RPM (20332)	\$800 LFF	2018 pre-general	Treasurer does not feel qualified to prepare reports so chair has been doing so and forgot to submit pre-general report in midst of also serving as campaign manager and treasurer for campaign committee of party unit treasurer, who was running as first-time house candidate.	Member Swanson	To reduce the late filing fee to \$400	Roll call vote was taken. Motion passed (5 ayes, Member Rosen did not vote).

Freeborn County DFL (20038)	\$50 LFF	2018 pre- general	Treasurer since 2017 does not know how to use CFR software but has been filing reports via software with assistance of treasurer of another party unit. That individual ultimately helped to file report but it was a day late. A different person with more time and a plan to receive training on how to use software has since taken over as treasurer.	No motion		
Houston County RPM (20568)	\$200 LFF	2018 pre- general	Treasurer since 2016 still does not feel he understands CFR software. He states that he has sought training but hasn't received training specific to the software and has had difficulty completing reports. He intends to resign as treasurer in February.	No motion		

D. Informational Items

1. Payment of late filing fee for year-end 2017 report of receipts and expenditures

Al Jimenez Hopper, \$25
White Earth PAC, \$1000

2. Payment of civil penalty for year-end 2012 report of receipts and expenditures

HRCC, \$3000

3. Payment of civil penalty for year-end 2013 report of receipts and expenditures

HRCC, \$3000

4. Payment of civil penalty for year-end 2014 report of receipts and expenditures

HRCC, \$3000

5. Payment of civil penalty for year-end 2016 report of receipts and expenditures

HRCC, \$3000

6. Payment of civil penalty for year-end 2017 report of receipts and expenditures

HRCC, \$3000
White Earth PAC, \$500

7. Payment of late filing fee for April 16, 2018, report of receipts and expenditures

White Earth PAC, \$1000

8. Payment of late filing fee for June 14, 2018, report of receipts and expenditures

White Earth PAC, \$1000

9. Payment of late filing fee for September 25, 2018, report of receipts and expenditures

CWA Cope PCC, \$25
CWA Working Voices, \$25
MPA PAC, \$50
SEIU Local 284, \$25
TCO PAC, \$25
Twin Cities DSA, \$50
White Earth PAC, \$1000

10. Payment of late filing fee for July 30, 2018, report of receipts and expenditures

AFSCME Local 2822, \$400
White Earth PAC \$1000

11. Payment of civil penalty for July 30, 2018, report of receipts and expenditures

AFSCME Local 2822, \$100
SD67, \$50
White Earth PAC, \$1000

12. Payment of civil penalty for accepting contribution from unregistered association without required disclosure

Burt Johnson, \$50
Heat & Frost Insulators Local 34, \$50

13. Return of public subsidy payment

Kelly Winsor, \$176.33

14. Payment of late filing fee for October 29, 2018, report of receipts and expenditures

Chisago County RPM, \$1000
MN Jobs Coalition, \$50
REALIEF, \$700
Vote 66, \$250
White Earth PAC, \$1000

15. Payment of civil penalty for October 29, 2018, report of receipts and expenditures

4th CD IPMN, \$50
Chisago County RPM, \$400
White Earth PAC, \$300

16. Payment of civil penalty for corporate contribution

Green Rock Apartments, \$100
Sibley County RPM, \$90

17. Anonymous contribution

Doug Wardlow, \$300

18. Payment of civil penalty for disclaimer violations

Joe Perske, \$500
Land Stewardship Fund, \$200

19. Payment of late filing fee for 24-hour notice during pre-general period

East Central MN Area Labor Council, \$500
Planned Parenthood MN PAC, \$850

LEGAL COUNSEL'S REPORT

Mr. Hartshorn presented members with a legal report that is attached to and made a part of these minutes. Mr. Hartshorn said that he had told the Duluth DFL's attorney that if the party unit did not submit its reports to Board staff by February 15, 2019, the litigation in the matter would resume.

OTHER BUSINESS

There was no other business to report.

There being no other business, the meeting was adjourned by the chair.

Respectfully submitted,



Jeff Sigurdson
Executive Director

Attachments:

Executive director's report
Memorandum regarding Advisory Opinion 450
Draft Advisory Opinion 450
Memorandum regarding legislative proposals
Supplemental memorandum regarding legislative proposals
Final public subsidy audit report for the special election in senate district 11
Legal report



MINNESOTA

CAMPAIGN FINANCE BOARD

Date: January 29, 2019

To: Board Members

From: Jeff Sigurdson, Executive Director

Telephone: 651-539-1189

Re: Executive Director's Report – Board Operations January 2019

Year-end Reports

All three major program areas; campaign finance, lobbying, and economic interest statements have year-end filing requirements in January. A brief update for each program follows:

Lobbying Program. The lobbyist disbursement report covering the period of June 1 through December 31, 2018, was due on January 15, 2019. Only 17 of the 2,117 reports due were not filed by the deadline. The use of the online reporting system remains high with 94% of reports filed electronically.

Campaign Finance Program. The year-end report of receipts and expenditures for 2018 is due on January 31, 2019. Staff will be sending a series of e-mail and telephone call reminders to non-filers prior to the deadline.

Economic Interest Statement. The annual certification by public officials for 2018 was due on January 28, 2019. As of the date of this memo, over 2,700 of the 2,940 annual certifications (92%) have been filed.

Presentations to the Legislature

With the new year staff has again started to schedule campaign finance compliance training and software training. Five committees attended the January software training class. Attendance at training classes during a non-election year is usually somewhat low, but important as committees bring in new treasurers.

I presented an overview of Board functions to the House State Government Finance Division (Rep. Michael Nelson, Chair) on January 16th, and presented a similar presentation to the Senate State Government Finance and Policy and Elections Committee (Sen. Mary Kiffmeyer, Chair) on January 29th. The presentations focus on a review of Board functions and fiscal requests.

Public Subsidy Payment – Special Election Senate District 11

The Board issued public subsidy payments to the qualified candidates in the special election for Senate District 11 on January 25, 2019. The payments were \$8,787.36 to Stu Lourey (DFL) and \$6,733.70 to Jason Rarick (RPM).

Memo Regarding Citizens United v Schneiderman (New York)

On occasion I ask Andrew Olson to develop a memo reviewing a court decision, legislation, or other issue in another state, or at the national level, that is related to the Board's areas of responsibility. The attached memo reviews a recent court case in the state of New York on the disclosure of contributors to 501(c)(3) and 501(c)(4) organizations.

Attachments

Memo - Citizens United v Schneiderman



MINNESOTA

CAMPAIGN FINANCE BOARD

Date: January 30, 2019

To: Board Members

From: Jeff Sigurdson, Executive Director

Telephone: 651-539-1189

Re: Advisory opinion 450 – Use of principal campaign committee funds to support the activities of a legislative caucus.

The request for this advisory opinion was received from Representative Drazkowski on January 22, 2019. Representative Drazkowski has submitted the request on behalf of himself and the other members of the New House Republican Caucus (NHRC). Representative Drazkowski has signed a waiver making the request public.

The NHRC is a legislative caucus recognized by the Speaker of the House. Similar to the DFL and Republican legislative caucuses in the House, the members of NHRC have been assigned office space, committee assignments, seating on the House floor, and the authority to hire staff based on their caucus membership.

The advisory opinion request states that the NHRC has start up and initial operating costs that will not be funded by the legislature. The request asks a series of questions on whether the members of the NHRC may use principal campaign committee funds to pay for specified costs, and if so, how the expenditures should be categorized and reported.

The draft advisory opinion concludes that, with restrictions, the specified costs may be paid for with principal campaign committee funds, and reported as non-campaign disbursements. The reasoning behind this conclusion is more fully explained in the draft.

Attachments:

Advisory opinion request

Draft advisory opinion

**State of Minnesota
Campaign Finance and Public Disclosure Board
Suite 190, Centennial Building. 658 Cedar Street. St. Paul, MN 55155-1603**

**THIS ADVISORY OPINION IS PUBLIC DATA
pursuant to a consent for release of information
provided by the requester**

Issued to: Representative Steve Drazkowski
New House Republican Caucus
327 State Office Building
St. Paul, MN 55155

ADVISORY OPINION 450

SUMMARY

A principal campaign committee may pay for certain expenses related to the operation of a legislative caucus that qualify as non-campaign disbursements under Chapter 10A.

FACTS

As a member of the New House Republican Caucus (NHRC) you request an advisory opinion from the Campaign Finance and Public Disclosure Board based on the following facts that were provided in the letter requesting the advisory opinion and in discussions with Board staff.

1. You are a member of the Minnesota House of Representatives, representing District 21B.
2. You and three other member of the House of Representatives formed the NHRC at the beginning of the 2019 legislative session. The NHRC has been recognized as a legislative caucus by the Speaker of the House. NHRC members have been assigned office space, seating in the House chambers and given the authorization to hire staff and committee assignments based on their membership in the caucus.
3. You are the leader of the NHRC.
4. The Republican Party of Minnesota is the political affiliation of the members of the NHRC.
5. The NHRC will incur certain costs for startup and initial support of the caucus. Not all of these costs will be paid for by the legislature. You seek guidance from the Board on the use of principal campaign committee funds to pay for the costs specified in the advisory opinion request.

6. In particular you ask for guidance on whether the use of principal campaign committee funds to pay for NHRC expenses may be classified as a noncampaign disbursement.

INTRODUCTION

The term “legislative caucus” is not defined in Chapter 10A, and does not appear to be defined in any Minnesota statute. The term is used most often to refer to the organization of members of the legislature, which typically is organized along political party lines. The legislative caucuses elect or appoint members to leadership positions within the caucus, and hire staff to support policy development, provide public education on the issues supported by the caucus, and ultimately support the enactment of the legislative goals of the caucus. The legislature pays caucus staff salaries and extends other administrative support to the caucuses. The legislative caucuses that develop policy and legislation are not registered or regulated by the Board because they are funded with tax dollars, and they are not organized to influence the nomination or election of candidates.

However, prior Board advisory opinions have also used the term “legislative caucus” as a shorthand reference for a political party unit organized within a body of the legislature. In retrospect, the Board’s use of this term was confusing, and requires an explanation. A major or minor political party registered with the Board must at a minimum have a state central committee. A political party may also organize and register additional political party units that in aggregate represent the political party.¹ A major or minor political party may recognize and authorize the registration of a single party unit for each political or geographic area recognized in Chapter 10A.² Critical to this discussion, a political party may also recognize and authorize the registration of one party unit organized within each body of the legislature. Unlike legislative caucuses, the political party units organized for the House and Senate exist to influence the nomination and election of candidates.

Going forward, the Board will use the term “legislative party unit” when discussing a political party unit organized in a legislative body. Prior advisory opinions that use the term “legislative caucus” should be read with the understanding that the reference means a political party unit registered under Chapter 10A.

In this advisory opinion, the Board is asked to provide guidance to members of a newly recognized legislative caucus. The legislature has extended some support to the NHRC, but the caucus has start up and initial operating costs that are not currently funded. The NHRC members wish to develop and promote the legislative policy positions of the caucus and are willing to pay for the expenditures detailed in the advisory opinion request with their principal campaign committee funds if those payments are allowed by Chapter 10A.

¹ Minnesota Statutes section 10A.01, subdivision 29, defines political party as follows: “‘Political party’ means a major political party or a minor political party. A political party is the aggregate of all its political party units in this state.”

² Minnesota Statutes section 10A.01, subdivision 30, defines political party unit or party unit as follows: “‘Political party unit’ or ‘party unit’ means the state committee or the party organization within a house of the legislature, congressional district, county, legislative district, municipality, or precinct.”

ISSUE ONE

May members of the NHRC use principal campaign committee funds to pay for signage identifying caucus offices, caucus stationary, and other basic office supplies for the caucus?

OPINION ONE

Yes. In general, money raised for political purposes must be used for expenses related to the conduct of an election campaign or for a noncampaign disbursement listed in Chapter 10A. Minn. Stat. § 211B.12. As discussed above, the NHRC's expenses are not related to the conduct of an election campaign. Consequently, the members of the NHRC may use their principal campaign committee funds for the NHRC expenses only if those expenses qualify as a noncampaign disbursement.

Minnesota Statutes section 10A.01, subdivision 26, provides a list of noncampaign disbursements that may be paid for with principal campaign committee funds. In particular, this statute provides that incumbent legislators may use principal campaign committee funds for the following expense:

(10) payment by a principal campaign committee of the candidate's expenses for serving in public office, other than for personal uses.

The category of costs related to serving in public office includes those costs that would not occur without membership in the legislature and that are ordinary and reasonable expenses incurred in order to better perform the tasks of a legislator.³

Signage for a member's office identifying the member as part of the NHRC, stationery printed with the legislator's NHRC membership, and basic office supplies are all expenses that NHRC members would not have incurred if they were not members of the legislature. These expenses also are ordinary and reasonable expenses incurred to help the member better perform the tasks of a legislator. These expenses therefore may be paid with principal campaign committee funds as a cost of serving in office.

ISSUE TWO

May members of the NHRC use principal campaign committee funds to pay for an NHRC website, social media accounts, telephone expenses, and other communication costs related to supplying NHRC's legislative message to constituents and supporters?

OPINION TWO

Yes, with restrictions. The specified expenses of establishing and operating a website and other communications that promote the legislative positions of the NHRC are not the usual operating costs for a legislator. Consequently, they cannot be paid for as costs of serving in office. In addition, the communications will reach, and are intended to reach, individuals who do not reside in the legislative districts of NHRC members. The broad audience for the

³ See Advisory Opinions 255 and 314.

communications precludes categorizing their costs as services for a constituent under Minnesota Statutes section 10A.01, subdivision 29, paragraph (6).

However, Minnesota Statutes section 10A.01, subdivision 26, paragraph (9), provides that principal campaign committee funds may be used for the following expenses:

(9) payment of expenses incurred by elected or appointed leaders of a legislative caucus in carrying out their leadership responsibilities.

As stated earlier, the term “legislative caucus” is not defined in Chapter 10A. However, there is no reason to believe that this noncampaign disbursement category is not available to the leadership of the NHRC as a legislative caucus recognized by the Speaker of the House. Among other duties, legislative caucus leadership is responsible for providing public education on issues important to the caucus and promoting the legislative positions of the caucus with the ultimate goal of enacting those positions into law. A website, social media posts, and other related communications all are methods that the NHRC leadership can use to accomplish those responsibilities. The NHRC leadership therefore may use principal campaign committee funds to pay expenses that they incur for a website, social media, and other related communications used to fulfill their responsibility to promote the legislative agenda of the NHRC.

The NHRC will need to monitor carefully its communications to ensure that they relate only to the legislative positions and message of the caucus.

ISSUE THREE

May members of the NHRC use principal campaign committee funds to pay for other start-up costs, such as securing legal counsel on the creation and operation of the new caucus?

OPINION THREE

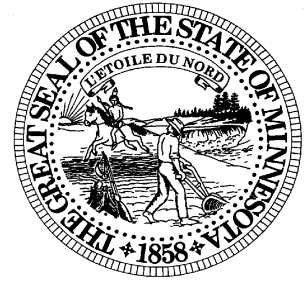
Yes, with restrictions. Legal counsel for the legislative caucus is not a usual expenditure for a legislator and therefore could not be paid for as a cost of serving in office. However, paying for legal advice to successfully launch and operate the NHRC may be seen as a responsibility of caucus leadership. Such costs therefore may be paid for with the principal campaign committee funds of NRHC members in leadership positions.

Issued February 6, 2019

Margret Leppik, Chair
Campaign Finance and Public Disclosure Board

Minnesota

Campaign Finance and Public Disclosure Board



Date: January 30, 2019

To: Board Members

From: Jeff Sigurdson, Executive Director

Telephone: 651-539-1189

Re: **Possible Legislative Recommendations**

At the January 2019 meeting Board Members discussed and adopted a number of legislative recommendations for the campaign finance and economic interest statement programs. However, the Board also expressed concerns on proposed language for the economic interest statement related to the disclosure of government contracts, and the spousal/beneficial interest proposal. The Board also expressed concerns about the language used in the proposal to modify the definition of expressly advocating for or against a candidate. The Board directed staff to work on alternative language for these proposals for consideration at the February meeting.

After the January meeting I forwarded Board members a working draft of language developed for the economic interest program, and provided a memo developed by Andrew Olson on the recommendation regarding functional equivalent of express advocacy. That memo is again provided for your reference.

The comments I received from Board members on the draft language for the economic interest program were extensive. Some of the comments pointed out flaws that if not addressed would make the recommendations extremely difficult to explain or administer. I appreciate the thought members gave to the issue, but because the feedback was extensive staff is still working on a revised draft of the language for beneficial interest and governmental contracts. The revised version will be sent to Board members, and posted for the public, prior to the February meeting.

In reaction to the memo on the functional equivalent of express advocacy, several members asked if staff could provide examples of advertisements that would require disclosure to the Board under the proposed statutory change. In response, I will be presenting print and video advertisements at the meeting that should provide some context for the Board's discussion of the proposed language.

I have also attached Board findings regarding certain mailing made by the Minnesota Family Council in 2014. The findings include exhibits of the mailings that were subject to investigation. I encourage members to read the findings carefully, as they represent the best example of the Board's inability to require disclosure for communications that have no apparent purpose other than to advocate for the election of a candidate.

Also attached for review is CFR §100.22, the current federal statute defining expressly advocating.

Attachments

Memo on functional equivalent of express advocacy
Findings regarding the Minnesota Family Council
CFR §100.22



MINNESOTA

CAMPAIGN FINANCE BOARD

Date: February 4, 2019

To: Board Members

From: Jeff Sigurdson, Executive Director

Telephone: 651-539-1189

Re: Possible EIS Legislative Recommendations and Alternative Definitions of Expressly Advocating

At the January 3, 2019, Board meeting, members asked staff to: 1) draft language to increase the threshold for reporting honoraria on an annual statement; 2) continue to work on draft language related to the disclosure of government contracts and spousal/beneficial interest disclosure; and 3) continue to work on alternative definitions of express advocacy for the Board to consider. This memo contains the draft language requested with an explanation of various options before the Board.

Increase amount of honoraria

The draft language below would increase the threshold at which honoraria must be reported from \$50 to \$250. The \$250 threshold conforms to the threshold for reporting sources of compensation. I believe this change could be included in the technical change bill.

Subd. 6. **Annual statement.** (a) Each individual who is required to file a statement of economic interest must also file an annual statement by the last Monday in January of each year that the individual remains in office. The annual statement must cover the period through December 31 of the year prior to the year when the statement is due. The annual statement must include the amount of each honorarium in excess of ~~\$50~~ \$250 received since the previous statement and the name and address of the source of the honorarium. The board must maintain each annual statement of economic interest submitted by an officeholder in the same file with the statement submitted as a candidate.

Disclosure of government contracts

In November, members asked staff to draft language that would require officials to disclose contracts held with government agencies. The proposed language would be added to the list of information in section 10A.09, subdivision 5, that officials must disclose on an economic interest statement (EIS). The language below was presented at the January meeting.

January language - (9) a listing of the name of any state department or agency listed in section 15.01 or 15.06, or any political subdivision, with which the individual, or the individual's employer, has a contract.

At the January meeting, members expressed concern about the breadth of this provision and asked staff to draft other language that would narrow the provisions' application. Below are two additional options for disclosure of government contracts.

Option 1 (9) a listing of any contract, professional license, lease, franchise, or permit that meets the following criteria:

(i) it is held by the individual or a company owned and controlled by the individual; and

(ii) it is entered into with or issued by any state department or agency listed in section 15.01 or 15.06 or any political subdivision of the state.

Option 2 (9) a listing of any contract, professional license, lease, franchise, or permit that meets the following criteria:

(i) it is held by the individual or any business in which the individual has an ownership interest of 25 percent or more; and

(ii) it is entered into with or issued by the government agency on which the individual serves as a public or local official.

Differences between the two options

- (1) The language describing the individual's ownership of a business is a bit different. The 25% language in option 2 conforms to existing language regarding the reporting of professional or business activity categories.
- (1) Option 1 applies to all state agencies and political subdivisions while option 2 applies only to the agency on which the individual serves. The rationale for option 2 is that a conflict of interest may exist if the public official is in a position to influence the issuance of a contract, professional license, franchise or permit. If that possibility does not exist, the information is not useful to the public.

Spousal/beneficial interest disclosure

At the November meeting, Board members directed staff to prepare language that would require disclosure of spousal interests on an EIS. Members also directed staff to explore the concept of beneficial interests. At the January meeting, staff presented language that would require the disclosure of spousal property on an EIS. This language was the same as the language that had been presented to the legislature in 2018. The spousal disclosure language is included with this memorandum as attachment 1.

At the January meeting, staff also presented language that would require individuals to disclose beneficial interests instead of spousal interests. Members expressed concern about the breadth of this language and asked staff to draft new language that would narrow or clarify the application of the proposal. The January language for beneficial interest disclosure is listed below along with two new options for this proposal.

January language - 10A.01 DEFINITIONS

Subd. 5. **Associated business.** "Associated business" means an association, corporation, partnership, limited liability company, limited liability partnership, or other organized legal entity

(a) from which the individual receives compensation in excess of \$250, except for actual and reasonable expenses, in any month during the reporting period as a director, officer, owner, member, partner, employer or employee, or

(b) whose securities the individual holds, or has a beneficial interest in, worth more than \$10,000 at fair market value; or

(c) in which the individual has a beneficial interest.

A beneficial interest is the right to the use of or benefit from an asset due to a contract, arrangement, understanding, or relationship with the owner of the asset.

Option 1 - 10A.01 DEFINITIONS

Subd. 7e. **Beneficial interest.** "Beneficial interest" means the right to the possession of, use of, or financial benefit from an asset owned by another due to a contract, arrangement, understanding, or relationship with the owner of the asset.

Option 2 – 10A.01 DEFINITIONS

Subd. 7e. **Beneficial interest.** "Beneficial interest" means the right to the possession or use of an asset owned by another due to a contract or relationship with the owner of the asset.

Both options 1 and 2 would require the following changes to section 10A.09 STATEMENTS OF ECONOMIC INTEREST

Subd. 5. **Form; general requirements.** (a) A statement of economic interest required by this section must be on a form prescribed by the board. The individual filing must provide the following information:

(1) name, address, occupation, and principal place of business;

(2) the name of each associated business and the nature of that association including any associated business in which the individual has a beneficial interest;

(3) a listing of all real property within the state, excluding homestead property, in which the individual holds: (i) a fee simple interest, a beneficial interest, a mortgage, a contract for deed as buyer or seller, or an option to buy, whether direct or indirect, if the interest is valued in excess of \$2,500; or (ii) an option to buy, if the property has a fair market value of more than \$50,000;

(4) a listing of all real property within the state in which a partnership of which the individual is a member holds: (i) a fee simple interest, a mortgage, a contract for deed as buyer

or seller, or an option to buy, whether direct or indirect, if the individual's share of the partnership interest is valued in excess of \$2,500; or (ii) an option to buy, if the property has a fair market value of more than \$50,000. A listing under this clause or clause (3) must indicate the street address and the municipality or the section, township, range and approximate acreage, whichever applies, and the county in which the property is located;

(5) a listing of any investments, ownership, or interests in property connected with pari-mutuel horse racing in the United States and Canada, including a racehorse, in which the individual directly or indirectly holds a partial or full interest or an immediate family member holds a partial or full interest;

(6) a listing of the principal business or professional activity category of each business from which the individual receives more than \$250 in any month during the reporting period as an employee, if the individual has an ownership interest of 25 percent or more in the business;

(7) a listing of each principal business or professional activity category from which the individual received compensation of more than \$2,500 in the past 12 months as an independent contractor; and

(8) a listing of the full name of each security with a value of more than \$10,000 owned in part or in full by the individual, or in which the individual has a beneficial interest, at any time during the reporting period.

Differences between the options

(1) Options 1 and 2 both create a separate definition of beneficial interest instead of including this term in the definition of associated business. Staff chose this path because all definitions of beneficial interest use the term “asset.” Some Board members correctly pointed out that the term “asset” was not defined and could be broadly interpreted. By creating a new definition of beneficial interest and then specifying in section 10A.09, subdivision 5, the assets to which this definition applies, the meaning of the term “asset” in the definition of beneficial interest is narrowed to include only real property, securities, and associated businesses. The EIS statute already defines the terms “securities” and “associated business” and the term “real property” is commonly understood to mean land and any buildings or fixtures attached to the land.

(2) Similarly, creating a new definition of beneficial interest and then specifying the assets to which this definition applies in the section listing what must be on an EIS also narrows the beneficial interests that must be reported to those held during the reporting period.

(3) Option 2 does not include the right to benefit from an asset. Some members have pointed out that the phrase “benefit from” can be broadly interpreted.

(4) Options 1 and 2 both include the right to the possession of the asset.

(5) Option 2 does not include the terms “arrangement” or “understanding,” which also are terms that could be read very broadly.

Remaining issues with both beneficial interest options that require Board direction

(1) Both options 1 and 2 would apply to real property, securities, and associated businesses owned by people or entities other than spouses. Covered family members would at a minimum include children, parents, and siblings. Non-family members and employers arguably would be

covered if the term “relationship” is not defined. If the term “relationship” is defined then the same concerns raised against spousal disclosure would also apply.

(2) The term “right” is not defined. If the term “right” is limited to a present right to the possession, use, or benefit from an asset, it is not clear how many additional interests would be captured. If the term “right” includes a future right to the possession, use, or benefit from an asset, it is not clear whether individuals would be aware of those rights or whether those rights would be certain enough to justify disclosure.

Next steps

Staff is seeking direction on the remaining issues related to spousal/beneficial interest disclosure. Staff also would like to raise the possibility of returning to the original spousal disclosure language. Although this language was presented to but not adopted by the 2018 legislature, some legislators expressed support for the concept of spousal disclosure. In addition, new legislators have been elected who have not yet considered the proposal and who may have suggestions for refining the proposal. Finally, if the primary intent of the beneficial interest proposal is to obtain disclosure of spousal assets, it may be more straightforward to pursue that option. The additional disclosure for government contracts and the additional disclosure for either spousal or beneficial use are policy options that should be presented in a separate bill from technical changes.

Express Advocacy – Functional Equivalent

Options provided in January - 10A.01 DEFINITIONS

Option 1 - Subdivision 16a. **Expressly advocating.** “Expressly advocating” means:

- (1.) that a communication clearly identifies a candidate and uses words or phrases of express advocacy; or
- (2.) that a communication, when taken as a whole and with limited reference to external events, including the proximity to the election, is not susceptible to any other interpretation by a reasonable person other than that as advocating the election or defeat of a one or more clearly identified candidates.

Option 2 - Subdivision 16a. **Expressly advocating.** “Expressly advocating” means:

- (1.) that a communication clearly identifies a candidate and uses words or phrases of express advocacy; or
- (2.) that a communication when taken as a whole is susceptible of no reasonable interpretation other than as advocating for the election or defeat of one or more clearly identified candidates.

Option 3 - Subdivision 16a. **Expressly advocating.** “Expressly advocating” means:

- (1.) that a communication clearly identifies a candidate and uses words or phrases of express advocacy; or
- (2.) when taken as a whole and with limited reference to external events, including the proximity to the election, could only be interpreted by a reasonable person as containing advocacy of the election or defeat of one or more clearly identified candidate(s) because (1) The electoral portion of the communication is unmistakable, unambiguous, and suggestive of only one meaning; and (2) Reasonable minds could not differ as to whether it encourages actions to elect or defeat one or more clearly identified candidate(s) or encourages some other kind of action.

Differences between the options

(1) Option 1 is the language recommended by the Board at the 2013, 2014, and 2015 sessions. It was meant to be a condensed version of the federal standard. During committee hearings on the provision it appeared to staff that the legislature may have preferred the more explicit language in the federal version.

(2) Option 2 is similar to option 1, other than it does not contain “and with limited reference to external events, including the proximity to the election.” In committee hearings it appeared that some legislators were uncomfortable with any specific reference to the timing of the

communication to determine if material was expressly advocating for or against a candidate. The language was seen as a step towards regulating “electioneering communications.” Electioneering communications are communications that a reasonable person could view as for a purpose other than influencing the nomination or election of a candidate, but which are nonetheless regulated as independent expenditures because of the communications’ proximity to the date of the election.

(3) Option 3 is very similar to the federal definition of expressly advocating. Another option would be to adopt option 3 without the phrase “including the proximity to the election.”

Attachment 1 - Spousal disclosure language

10A.01 DEFINITIONS

Subd. 5. **Associated business.** "Associated business" means an association, corporation, partnership, limited liability company, limited liability partnership, or other organized legal entity from which the individual, or the individual's spouse, receives compensation in excess of \$250, except for actual and reasonable expenses, in any month during the reporting period as a director, officer, owner, member, partner, employer or employee, or whose securities the individual, or the individual's spouse, holds worth more than \$10,000 at fair market value.

10A.09 STATEMENTS OF ECONOMIC INTEREST

Subd. 5. **Form; general requirements.** (a) A statement of economic interest required by this section must be on a form prescribed by the board. The individual filing must provide the following information:

(1) the individual's name, address, occupation, and principal place of business;

(2) a listing of the name of each associated business and the nature of that association;

(3) a listing of all real property within the state, excluding homestead property, in which the individual, or the individual's spouse, holds: (i) a fee simple interest, a mortgage, a contract for deed as buyer or seller, or an option to buy, whether direct or indirect, if the interest is valued in excess of \$2,500; or (ii) an option to buy, if the property has a fair market value of more than \$50,000;

(4) a listing of all real property within the state in which a partnership of which the individual, or the individual's spouse, is a member holds: (i) a fee simple interest, a mortgage, a contract for deed as buyer or seller, or an option to buy, whether direct or indirect, if the individual's share of the partnership interest is valued in excess of \$2,500; or (ii) an option to buy, if the property has a fair market value of more than \$50,000. A listing under this clause or clause (3) must indicate the street address and the municipality or the section, township, range and approximate acreage, whichever applies, and the county in which the property is located;

(5) a listing of any investments, ownership, or interests in property connected with pari-mutuel horse racing in the United States and Canada, including a racehorse, in which the individual directly or indirectly holds a partial or full interest or an immediate family member holds a partial or full interest;

(6) a listing of the principal business or professional activity category of each business from which the individual, or the individual's spouse, receives more than \$250 in any month during the reporting period as an employee, if the individual, or the individual's spouse, has an ownership interest of 25 percent or more in the business;

(7) a listing of each principal business or professional activity category from which the individual, or the individual's spouse, received compensation of more than \$2,500 in the past 12 months as an independent contractor; and

(8) a listing of the full name of each security with a value of more than \$10,000 owned in part or in full by the individual, or the individual's spouse, at any time during the reporting period.

**STATE OF MINNESOTA
CAMPAIGN FINANCE AND PUBLIC DISCLOSURE BOARD**

FINAL AUDIT REPORT

AUDIT OF ELIGIBILITY FOR PUBLIC SUBSIDY PAYMENTS – SENATE DISTRICT 11 SPECIAL ELECTION:

A candidate must do the following to be eligible for public subsidy payments for a special election: (1) sign a public subsidy agreement in which the candidate agrees, among other requirements, to be bound by a spending limit; (2) raise a statutorily-specified amount in qualifying contributions from individuals, (3) file an affidavit of contributions with the Board verifying that the candidate has raised the required amount in qualifying contributions, and (4) appear on the special general election ballot.

To ensure eligibility for public subsidy payments for the special election in senate district 11, the Board audited the qualifying contributions of candidates seeking public subsidy payments who did not use the Campaign Finance Reporter software to submit their affidavits of contributions and whose total reported individual contributions on the pre-primary election report were less than the audit threshold. The audit threshold was set at \$6,000, which is twice the \$3,000 amount that a special election senate candidate was required to raise in qualifying contributions. Although the period covered by the pre-primary report ended on January 8, 2019, the qualifying contributions could be raised from January 1, 2018, through January 14, 2019.

Reporting individual contributions less than the audit threshold had no effect on a candidate's eligibility for public subsidy payments. It simply determined which candidates would be subject to an audit by the Board to ensure that their affidavits of contributions were, in fact, correct and that the candidates actually had raised the required amount in qualifying contributions.

Applying the audit criteria to candidates who were seeking public subsidy in the special election for senate district 11 resulted in an audit of two candidates: Michelle Lee and Jason Rarick. The Board asked each candidate to provide a list of the individual contributions that had been included in the amount required to qualify for public subsidy along with each contributor's name and address. To be included in the qualifying amount, a contribution had to have been made by an individual eligible to vote in Minnesota. In addition, only the first \$50 from each contributor could be included in the qualifying amount and in-kind contributions could not be considered.

Board staff reviewed the lists of individual contributors provided by the candidates against the criteria for eligible qualifying contributions. Jeff Sigurdson, executive director to the Board, was the individual primarily responsible for the audit. Mr. Sigurdson was supported in evaluating the candidates' responses by Melissa Stevens, compliance officer, and Jodi Pope, legal analyst.

The chart below lists the candidates who were subject to the audit and their audited contributions.

Reg No	Committee name	Party	2018 qualifying contributions	2019 qualifying contributions	Total qualifying contributions
18408	Michelle Lee for State Senate	DFL	\$0.00	\$5,375	\$5,375
18406	Rarick (Jason) for Senate	RPM	\$0.00	\$5,365	\$5,365

Audit finding:

Both committees subject to the audit raised the required amount in qualifying contributions.

Responsible Staff Person:

/s/ Jeff Sigurdson
Jeff Sigurdson, Executive Director
Campaign Finance and Public Disclosure Board

Date: February 6, 2019

/s/ Margaret Leppik
Margaret Leppik, Chair
Campaign Finance and Public Disclosure Board

Date: February 6, 2019

**STATE OF MINNESOTA
CAMPAIGN FINANCE AND PUBLIC DISCLOSURE BOARD**

**IN THE MATTER OF THE INVESTIGATION
OF MINNESOTA FAMILY COUNCIL**

**FINDINGS, CONCLUSIONS,
AND ORDER**

Background

In early July 2014, the Campaign Finance and Public Disclosure Board became aware of two communications that were being disseminated with the attribution "Prepared and paid for by Minnesota Family Council" (MFC) and the statement: "Learn more at www.mfc.org." The communications each related to Sheila Kihne, known to the Board to be a candidate in the Republican primary election for House District 48B. Copies of the communications are attached to and made a part of this document as exhibits A and B.

The communications identified Kihne as a "Trusted Conservative" and stated:

Sheila will:

Restore fiscal discipline to
the state budget

Defend our second
amendment

Strengthen Minnesota's
schools

Protect life and family
values

Board records indicated that Ms. Kihne was not a member of the Minnesota Legislature when the communications were disseminated. Thus, unless elected, she had no ability different than that of any private citizen to accomplish the things MFC said she would do.

The communications also included a prominent notice: "Primary Election Aug. 12th!" The communications further informed recipients that "Early voting begins on Friday, June 27th at Eden Prairie City Hall." The early voting notice included the address of the city hall and the hours that it was open. In one case the communication expressly advised readers to "Vote early starting June 27th at Eden Prairie City Hall."

Based on the content of the communications, the Board directed its Executive Director to initiate an investigation into whether the communications and any similar communications by MFC were subject to the disclosure requirements of Minnesota Statutes Chapter 10A, the Campaign Finance and Public Disclosure Act.

Board staff asked MFC for information regarding the communications and any other communications disseminated by MFC related to the Kihne election. In response, MFC provided copies of seven mail piece communications, one newspaper ad, and a number of broadcast television and online communications. Most of the communications were similar to the two initially considered by the Board.

In its response, MFC argued that "only communications that 'expressly advocate' for or against a candidate can be regulated." (Citing §10A.01, subs. 16a and 18, the definitions of "expressly

advocating" and "independent expenditure.") MFC asserted that because the communications did not contain express advocacy, they were not subject to Chapter 10A.

Analysis

MFC is an association that has as its major purpose something other than to influence the nomination or election of candidates in Minnesota. This conclusion was reached in the context of a Board investigation in 2012 and the Board has found no new facts that would change the characterization of the association. As a result, MFC is not a political committee. If it is to report at all, it will be through a political fund, which is the campaign finance disclosure mechanism used for non-major-purpose associations.

A political fund is:

an accumulation of dues or voluntary contributions by an association other than a political committee, principal campaign committee, or party unit, if the accumulation is collected or expended to influence the nomination or election of one or more candidates or to promote or defeat a ballot question. Minnesota statutes section 10A.01, subdivision 28.

The definition of a political fund makes it clear that once an association expends money to influence the nomination or election of candidates, that money constitutes the association's political fund, which exists as a matter of law without the association doing anything other than the spending.

An association is required to register its political fund after it has "made expenditures" of more than \$750 or made "independent expenditures" of more than \$1,500.¹ Minnesota statutes section 10A.14. An "expenditure" is

a purchase or payment of money or anything of value, or an advance of credit, made or incurred for the purpose of influencing the nomination or election of a candidate . . . Minnesota statutes section 10A.01, subdivision 9.

The phrase "to influence the nomination or election of one or more candidates" used in the definition of a political fund and the phrase "for the purpose of influencing the nomination or election of a candidate" used in the definition of expenditure are interchangeable and are construed by the Board to mean the same thing. Thus, if MFC spent money to influence the nomination of Sheila Kihne in the primary election, the accumulation of money used for that purpose constitutes MFC's political fund and the spending transactions constitute "expenditures."

The controlling question is whether the money MFC spent on the Kihne literature was spent "to influence" (or "for the purpose of influencing") the nomination of Ms. Kihne through the primary election process or for some other purpose.²

¹ A political fund is not an entity separate from the association that did the spending. Rather, it is an accounting mechanism used to track spending that is subject to disclosure. Registration is simply notifying the Board that the accounting mechanism exists and informing the Board of the name of the contact person for the association.

² There is no evidence that the MFC expenditures were made with the authorization or expressed or implied consent of, or in cooperation or in concert with, or at the request or suggestion of the candidate, the candidate's principal campaign committee, or the candidate's agent. Money spent with the authorization or expressed or implied consent of, or in cooperation or in concert with, or at the request or suggestion of the candidate, the candidate's principal campaign committee, or the candidate's agent is presumed to be to influence the nomination or election of that

The Board first considered whether the communications constituted independent expenditures. An independent expenditure is an expenditure that is made completely independently from a candidate and that advocates for the election or defeat of the candidate using words or phrases of express advocacy. An independent expenditure is, by definition, an expenditure made for the purpose of influencing the nomination or election of a candidate. Minnesota statutes section 10A.01, subdivisions 18 and 16a.

Minnesota Statutes do not define what "words or phrases of express advocacy" are and the Board has not adopted administrative rules to clarify the statutory language. However, the U.S. Supreme Court in a brief footnote in the case of *Buckley v. Valeo*, 424 U.S. 1 (1976), suggested that words of express advocacy included words and phrases such as "vote for," "elect," "vote against." For the purposes of this investigation, the Board adopts the *Buckley* definition.

There is no evidence to suggest that the communications were not made completely independently of the candidate. Thus, the factor on which their characterization as independent expenditures depends is whether or not they expressly advocated for Ms. Kihne's nomination in the primary election. A copy of the MFC communication that has the strongest potential for being express advocacy is attached to and made a part of this document as exhibit C. The communication states on the front: "Sheila Kihne is fighting the liberal special interests." On the reverse the piece includes the following statements:

Liberals like Obama and Franken don't want Sheila.
Don't let them win. Plan ahead, and vote early.

VOTE EARLY IN PERSON

Eden Prairie City Center
8080 Mitchell Road, Eden Prairie Minnesota
Monday through Friday 8 a.m.- 4:30 pm [sic]

VOTE BY MAIL

Request your absentee ballot quickly and easily online.
www.sos.state.mn.us

Primary Election Aug. 12th!

Sheila Kihne
Trusted Conservative

A careful examination of this communication leads the Board to conclude that the piece is not an independent expenditure because MFC has avoided using specific words or phrases of express advocacy such as those described in the *Buckley* footnote. None of the other MFC communications comes closer to express advocacy than the example above. Thus, the MFC communications are not independent expenditures.

Having concluded that the MFC spending does not constitute approved expenditures or independent expenditures, the question on which this matter hinges is whether an expenditure that is made independently of the candidate, yet does not meet the narrow criteria defining an independent expenditure, can be for the purpose of influencing the candidate's nomination or

candidate and constitutes an approved expenditure. Since there is no evidence that the expenditures were approved expenditures, that topic is not discussed further in this document.

election and, thus, subject to disclosure. MFC asserts that it cannot, but Supreme Court First Amendment jurisprudence suggests that the answer is not so clear.

In *Buckley v. Valeo*, the Supreme Court determined that when applied to a non-major-purpose association acting completely independently of a candidate, the phrase "for the purpose of influencing" would be constitutional if it was construed narrowly to include only expenditures for communications that expressly advocate the election or defeat of a clearly identified candidate.

In *MCCL v. Kelley*, 698 N.W.2d 424 (Minn. 2005), the Minnesota Supreme Court considered the definition of "to influence" elections in the context of political funds. The Minnesota Court stated that the *Buckley* decision requiring a narrowing construction of the phrase "for the purpose of influencing" was controlling with respect to interpretation of the phrase "to influence" in Chapter 10A.

Thus, after *Buckley* and *MCCL*, it was clear that money spent by a Minnesota non-major-purpose association independently of candidates could constitutionally be subject to disclosure only if the phrases "to influence" and "for the purpose of influencing" were narrowly construed. The construction suggested in *Buckley* and adopted in *MCCL* was to limit application of the disclosure requirement for non-major-purpose associations to only those expenditures that expressly advocated for the election or defeat of a candidate. Minnesota's independent expenditure statutes capture this concept.

However, analysis of First Amendment protections as applied to non-major-purpose associations did not stop with *Buckley* and *MCCL*. Subsequent U.S. Supreme Court decisions made it clear that the phrases "to influence" or "for the purpose of influencing" need not be construed as narrowly as suggested by the *Buckley* court in order to preserve their constitutionality when applied to non-major-purpose associations. Through two key cases further examining what communications by a non-major-purpose association may constitutionally be subject to disclosure, the Supreme Court has concluded that disclosure is also constitutional if the communication "is susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate."³ This type of communication is referred to as the functional equivalent of express advocacy.

Prior to 2014 both the definition of "expenditure" and of "independent expenditure", when applied to a non-major-purpose association, required the purpose of influencing an election. Thus, both could include communications that were either express advocacy or the functional equivalent of express advocacy.⁴ In 2014, however, Chapter 10A was amended to restrict the definition of independent expenditure to those communications that used words or phrases of express advocacy, precluding the use of the functional equivalent test to conclude that an expenditure made independently of a candidate was an "independent expenditure". However, the definition of "expenditure" itself was not changed.

The 2014 amendment results in a distinction between two communications, both made independently of the candidate. The first, which advocates for the election of the candidate using words or phrases of express advocacy, is an independent expenditure, which will trigger the disclosure requirements of Chapter 10A. The second, a communication that does not use words or phrases of express advocacy, but is susceptible of no reasonable interpretation other than as an

³ See *McConnell v. FEC*, 540 U.S. 93 (2003); *FEC v. Wisconsin Right To Life (WRTL II)*, 551 U.S. 449 (2007) (Quoted). See also, *Citizens United v. FEC*, 558 U.S. 310 (2010), reaffirming the principle.

⁴ The Board has previously noted that the definition of expenditure could be defined based on either the magic words or the functional equivalent of express advocacy, but it has not adopted that principle for Minnesota. See Advisory Opinion 428.

appeal to vote for or against a specific candidate, could also constitutionally be subject to disclosure requirements under the functional equivalent approach of *WRTL II*.

The Board has expressed in various contexts that its interpretation of Chapter 10A as a body of law is intended to provide the highest level of disclosure permitted by its language and constitutional principles. Consistent with that interpretation, the Board concludes that it would be permissible, both from a statutory interpretation and a constitutional law standpoint, to conclude that the definition of expenditure in §10A.01, subd. 9, and in the political fund registration requirement of §10A.14, subd. 1, apply to a non-major-purpose association, acting independently of a candidate, that makes a communication that is susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate.

The constitutional law now seems clear that the statutes subjecting non-major-purpose associations to disclosure requirements when they make expenditures "to influence" and "for the purpose of influencing" elections are constitutional as long as those phrases are construed to limit the disclosure requirement to expenditures that constitute express advocacy or its functional equivalent. However, the Board has been cautious in considering how this established constitutional concept should be recognized in Minnesota.

In Advisory Opinion 428 the Board declined to recognize the concept because of ongoing litigation at the federal level and because it considered the administrative rulemaking process to be better suited for statutory interpretations of general applicability. Although the federal litigation has ended, removing the legal questions surrounding the functional equivalent concept, the Board still concludes that administrative rulemaking is the preferred approach for statutory construction. As a result, the Board declines to conclude that the money spent by MFC for the communications that are the subject of this matter are "expenditures" under Chapter 10A.⁵

Findings of Fact

1. The MFC published a number of communications naming candidate Sheila Kihne during the 2014 primary election.
2. The communications were made completely independently of candidate Kihne.
3. The communications did not include words or phrases of express advocacy as interpreted by the Board for the purposes of this investigation.
4. Some of the communications, including those that are included as exhibits A, B, and C to this document, are susceptible of no reasonable interpretation other than as an appeal to vote for candidate Kihne in the primary election.

Conclusions of Law

1. The expenditures for the MFC communications were not independent expenditures or approved expenditures.

⁵ The Board notes that the adjudication process is an appropriate posture for the construction of statutes. The fact that the Board does not use this matter to adopt the functional equivalent approach to defining "to influence" should not be taken to suggest that it has relinquished its authority to do so in the context of a future investigation or through administrative rulemaking.

2. Under the current interpretation of Minnesota statutes, an expenditure by MFC will not be considered to be for the purpose of influencing the nomination or election of a candidate unless the resulting communication uses words or phrases of express advocacy.
3. The current interpretation of Minnesota statutes, which takes a more restrictive approach to defining "to influence" and "for the purpose of influencing" is not constitutionally mandated but will not be modified by the Board in this matter.
4. Based on the current interpretation of statute, the MFC communications are not subject to disclosure and MFC is not in violation of Chapter 10A.

Order

This matter is dismissed.

George A. Beck, Chair

Date

Primary
Election
Aug. 12th!



SHEILA KIHNE



Trusted Conservative.

*Early voting begins on Friday, June 27th at Eden Prairie City Hall
8080 Mitchell Road
Open Monday-Friday 8:00am to 4:30pm*



Prepared and paid for by Minnesota Family Council
2815 Anthony Lane South
Minneapolis, MN 55418

Learn more at www.mfc.org



SHEILA KIHNE



Trusted Conservative.

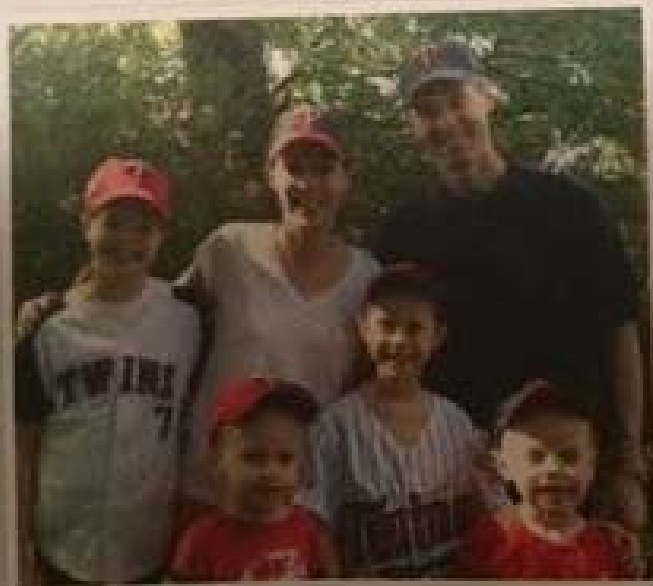
Sheila will:

Restore fiscal discipline to the state budget

Defend our second amendment

Strengthen Minnesota's schools

Protect life and family values



Primary
Election
Aug. 12th!



SHEILA KIHNE



Primary
Election
Aug. 12th

Trusted Conservative.



*Former University of Minnesota
Student Body President*



*Eden Prairie resident, author and
former small business owner*



*Understands the importance of
cutting state government spending*



*Will stand up for YOUR strong family
values*



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Primary Election August 12th
Early voting starts June 27th at Eden Prairie City Hall





Trusted Conservative Sheila Kihne is fighting the liberal special interests

- Sheila is a respected community leader
- Sheila will fight wasteful spending and government waste
- Sheila has strong ethics and will fight for YOUR family

SHEILA KIHNE



Primary
Election
Aug. 12th!

Election day is August 12th, but early voting has already started! Check back for details!

Liberals like Obama and Franken don't want Sheila.
Don't let them win. Plan ahead, and vote early.

EDEN PRAIRIE



WELCOME

VOTE EARLY IN PERSON

Eden Prairie City Center
8080 Mitchell Road, Eden Prairie Minnesota
Monday through Friday 8 a.m. – 4:30 pm

VOTE BY MAIL

Request your absentee ballot
quickly and easily online.
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Primary
Election
Aug. 12th!



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§ 100.22 Expressly advocating (52 U.S.C. 30101(17)).

Expressly advocating means any communication that—

Uses phrases such as **“vote for the President,” “re-elect your Congressman,” “support the Democratic nominee,” “cast your ballot for the Republican challenger for U.S. Senate in Georgia,” “Smith for Congress,” “Bill McKay in '94,” “vote Pro-Life” or “vote Pro-Choice”** accompanied by a listing of clearly identified candidates described as Pro-Life or Pro-Choice, **“vote against Old Hickory,” “defeat”** accompanied by a picture of one or more candidate(s), **“reject the incumbent,”** or communications of campaign slogan(s) or individual word(s), which in context can have no other reasonable meaning than to urge the election or defeat of one or more clearly identified candidate(s), such as posters, bumper stickers, advertisements, etc. which say **“Nixon's the One,” “Carter '76,” “Reagan/Bush” or “Mondale!”**; or

When taken as a whole and with limited reference to external events, such as the proximity to the election, could only be interpreted by a reasonable person as containing advocacy of the election or defeat of one or more clearly identified candidate(s) because—

1. The electoral portion of the communication is unmistakable, unambiguous, and suggestive of only one meaning; and
2. Reasonable minds could not differ as to whether it encourages actions to elect or defeat one or more clearly identified candidate(s) or encourages some other kind of action.

CAMPAIGN FINANCE AND PUBLIC DISCLOSURE BOARD

February 2019

ACTIVE FILES

Candidate/Treasurer/ Lobbyist	Committee/Agency	Report Missing/ Violation	Late Fee/ Civil Penalty	Referred to AGO	Date S&C Served by Mail	Default Hearing Date	Date Judgment Entered	Case Status
Chilah Brown Michele Berger	Brown (Chilah) for Senate	Unfiled 2016 Year- End Report of Receipts and Expenditures	\$1,000 LF \$1,000 CP	3/6/18	8/10/18			
		Unpaid late filing fee on 10/31/16 Pre- General Election Report	\$50 LF					
Brenden Ellingboe	Ellingboe (Brenden) for House	Unfiled 2015 Year- End Report of Receipts and Expenditures	\$1,000 LF \$1,000 CP	11/29/16	5/26/17			Placed on hold by Board
Richard Hamer		2017 Annual Statement of Economic Interest	\$100 LF \$1,000 CP	1/28/19				
Katy Humphrey, Kelli Latuska	Duluth DFL	Unfiled 2016 Year- End Report of Receipts and Expenditures	\$1,000 LF \$1,000 CP	3/6/18	8/10/18			
Bryan Klabunde	Klabunde for MN House	Unfiled 2017 Year- End Report of Receipts and Expenditures	\$1,000 LF \$1,000 CP	9/4/18	11/2/18			Placed on hold by Board

Candidate/Treasurer/ Lobbyist	Committee/Agency	Report Missing/ Violation	Late Fee/ Civil Penalty	Referred to AGO	Date S&C Served by Mail	Default Hearing Date	Date Judgment Entered	Case Status
Christopher John Meyer	Meyer for Minnesota	2016 Year-End Report of Receipts and Expenditures	\$1,000 LF \$1,000 CP	7/28/17	9/6/17			Removed Hold per Board on 1/28/19
Dan Schoen		2017 Annual Statement of Economic Interest	\$100 LF \$1,000 CP	1/28/19				
Kaying Thao	Friends of Kaying	2017 Year-End Report of Receipts and Expenditures	\$1,000 LF \$1,000 CP	7/10/18	8/10/18			
Sean White	Committee to Elect Sean White	2017 Year-End Report of Receipts and Expenditures	\$1,000 LF \$1,000 CP	7/10/18	8/10/18			

CLOSED FILES

Candidate/Treasurer/ Lobbyist	Committee/Agency	Report Missing/ Violation	Late Fee/ Civil Penalty	Referred to AGO	Date S&C Served by Mail	Default Hearing Date	Date Judgment Entered	Case Status